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EXAMINER

DUONG, FRANK

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 12/29/2003

16

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/213,096

Applicant(s)

KALKUNTE ET AL.

Examiner

Frank Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 21-23 and 25-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 21-23 and 25-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

1. This Office Action is a response to the amendment dated 10/22/2003. Claims 1-8, 21-23 and 25-38 are pending in the application.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 21, 25, 32 and 38 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 10, 16 and 19 of copending Application No. 09/271,011. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention of the instant application encompasses the claimed subject matters of the copending application. Evidence can be found through a comparison of the above claims. The differences between the disputed claims are mere wording and broadened by omitting of certain limitations. Such differences are deemed to be obvious to those skilled in the art. Moreover, the subject matter claimed in the instant application is fully

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disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter. There is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 21-23 and 25-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Bellenger (USP 5,802,054) in view of Muller et al (USP 6,021,132) (hereinafter "Muller").

Regarding **claims 1 and 8**, in according to Bellenger reference entirety (especially *Figs. 3-6 and the description at col. 3, line 1 to col. 4, line 67 and col. 8, line 3 to col. 16, line 10*), Bellenger discloses a method for improving receive performance in a data network (Fig. 3), the method comprising:

receiving up to a plurality of indications denoting the start of frame transmission on a corresponding plurality of communication links (201-1 to 201-X) (*Fig. 4, step 300*;

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col. 10, lines 35-36); identifying the start of a flow by analyzing information embedded within at least one received frame (*Fig. 4, steps 301- 303; col. 10, lines 46-48 and col. 9, lines 4-8*); dedicating a receive buffer from a plurality of receive buffers (207) to receive all frames associated with the identified flow (see col. 15, lines 11-14); and assigning a pointer value (*identifying tag or hash values*) to each frame for storage within a pointer buffer (221), each pointer value being based, at least in part, on the relative order in which the indications of start of frame transmissions associated with each frame are received, each corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order (see col. 3, lines 7-61, *Bellenger discloses a switch node comprises a flow logic generates identifying tag acted as flow signatures to associated a frame with a sequence of frames traversing the switch, and a node route logic performs the blocking technique allows the remote system to which a frame was directed for routing, to forward the frame to its destination, prior to other frames in the same flow sequence being routed to that destination. This preserves the order of the transmission of frames in a particular flow*). Bellenger fails to explicitly disclose the limitation of "assigning a pointer value to each frame for storage within a pointer buffer, each pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, each pointer value associated with each respective frame being used to preserve a state of frame transmission order according to complete reception of the frame without modifying the respective frame". However, such limitation lacks thereof from Bellenger reference is well known and disclosed by Muller.

In the same field of endeavor, Muller (*see the '132 patent entirety*) teaches a method for shared memory management in a switched network element, comprising, among other things, the limitation of *"assigning a pointer value to each frame for storage within a pointer buffer, each pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, each pointer value associated with each respective frame being used to preserve a state of frame transmission order according to complete reception of the frame without modifying the respective frame"* (*see '132, col. 6, line 44 to col. 7, line 41 and Fig. 5 and col. 10, line 47 to col. 11, line 15*) to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to implement Muller's teaching in Bellenger's method to arrive the claimed invention with a motivation to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Regarding **claim 2**, in addition to features in base claim 1 (*see rationales pertaining the rejection of base claim 1 discussed above*), Bellenger in view of Muller further teaches wherein identifying the start of flow includes analyzing destination information embedded within each of the received frames to determine source and destination information association with said frames (*see '054, col. 3, lines 7-20; Fig. 5, col. 10, line 65 to col. 11, line 40; and Fig. 6, col. 15, line 1-35*).

Regarding **claim 3**, in addition to features in base claim 1 (*see rationales pertaining the rejection of base claim 1 discussed above*), Bellenger in view of Muller

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further teaches wherein prior to assigning the pointer value, the method further comprising determining whether the identified flow required preservation of transmission order (see '132, col. 6, lines 7-11 and '054, col. 3, lines 48-61).

Regarding **claim 4**, in addition to features in base claim 3 (see *rationales pertaining the rejection of base claim 3 discussed above*), Bellenger in view of Muller further teaches wherein prior to assigning the pointer value, the method further comprising promoting frames of the received flow in the order received, unless it is determined flow requires preservation of transmission order (see '132, col. 7, lines 7-11 and '054, col. 3, lines 61-65).

Regarding **claim 5**, in addition to features in base claim 4 (see *rationales pertaining the rejection of base claim 4 discussed above*), Bellenger in view of Muller further teaches creating a list of pointer values corresponding to transmission order if it is determined that the identified flow requires preservation of transmission order (see '132, col. 7, lines 7-11 and '054, col. 3, line 1 to col. 4, line 39).

Regarding **claim 6**, in addition to features in base claim 1 (see *rationales pertaining the rejection of base claim 1 discussed above*), Bellenger in view of Muller further teaches wherein prior to assigning the pointer value, the method further comprising promoting frames from the dedicated received buffer in the order received, without regard to frame transmission order, unless it is determined that the identified flow requires preservation of transmission order (see '132, col. 7, lines 7-11 and '054, col. 3, lines 61-65).

Regarding **claim 7**, in addition to features in base claim 6 (*see rationales pertaining the rejection of base claim 6 discussed above*), Bellenger in view of Muller further teaches determining whether the identified flow requires preservation of transmission order by analyzing protocol identification information embedded within the received frames (*see '054, col. 3, lines 7-20; Fig. 5, col. 10, line 65 to col. 11, line 40; and Fig. 6, col. 15, line 1-35*).

Regarding **claims 21-23**, the claims calls for a computer program of the claimed method of claims 1 and 4-5, respectively (*see rationales pertaining the rejections of claims 1 and 4-5 discussed above*). Translating the method steps into a computer program is deemed to obvious and well known to those skilled in the art to provide an automated flow control system.

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to translate or code a computer program for Bellenger in view Muller's method steps of claims 1 and 4-5 to arrive the claimed invention with a motivation to provide an automated flow control system.

Regarding **claims 25 and 31**, in according to Bellenger reference entirety (*especially Figs. 3-6 and the description at col. 3, line 1 to col. 4, line 67 and col. 8, line 3 to col. 16, line 10*), Bellenger discloses a method comprising: receiving at least one indication denoting the start of frame transmission on a corresponding plurality of communication links (201-1 to 201-X) (*Fig. 4, step 300; col. 10, lines 35-36*); identifying a received identification denotes commencement of a flow (*Fig. 4, step 303; col. 10, lines 46-48 and col. 9, lines 4-8*); dedicating a buffer from a plurality of buffers (207) to



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receive all frames associated with the identified flow (see col. 15, lines 11-14); (note at col. 3, lines 41-65, Bellenger discloses the node route logic and its function that implicitly and inherently reads on the next two claimed steps) determining whether the identified flow requires preservation of frame transmission order; and assigning a pointer value (*identifying tag or hash values*) to each frame based, at least in part, on the relative order in which the indications of start of frame transmissions associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order (see col. 3, lines 7-61, Bellenger discloses a switch node comprises a flow logic generates identifying tag acted as flow signatures to associated a frame with a sequence of frames traversing the switch, and a node route logic performs the blocking technique allows the remote system to which a frame was directed for routing, to forward the frame to its destination, prior to other frames in the same flow sequence being routed to that destination. This preserves the order of the transmission of frames in a particular flow). Bellenger fails to explicitly disclose the limitation of "assigning a pointer value to each frame without modification of a frame, the pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, each pointer value associated with each respective frame being used to preserve a state of frame transmission according to complete reception of the frame". However, such limitation lacks thereof from Bellenger reference is well known and disclosed by Muller.

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In the same field of endeavor, Muller (*see the '132 patent entirety*) teaches a method for shared memory management in a switched network element, comprising, among other things, the limitation of *"assigning a pointer value to each frame without modification of a frame, the pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, each pointer value associated with each respective frame being used to preserve a state of frame transmission order according to complete reception of the frame"* (*see '132, col. 6, line 44 to col. 7, line 41 and Fig. 5 and col. 10, line 47 to col. 11, line 15*) to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to implement Muller's teaching in Bellenger's method to arrive the claimed invention with a motivation to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Regarding **claim 26**, in addition to features in base claim 25 (*see rationales pertaining the rejection of base claim 25 discussed above*), Bellenger in view of Muller further discloses wherein identifying the start of flow includes analyzing information embedded within each of the received frames to determine source and destination information associated with said frames (*see col. 3, lines 7-20; Fig. 5, col. 10, line 65 to col. 11, line 40; and Fig. 6, col. 15, line 1-35*).

Regarding **claim 27**, in addition to features in base claim 25 (*see rationales pertaining the rejection of base claim 25 discussed above*), Bellenger in view of Muller

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further discloses wherein the relying on the received indications comprises promoting frames of the received frames to determine source and destination information associated with said frames (*see col. 3, lines 61-65*).

Regarding **claim 28**, in addition to features in base claim 25 (*see rationales pertaining the rejection of base claim 25 discussed above*), Bellenger in view of Muller further discloses creating a list of pointer values corresponding to transmission order only if it is determined that the identified flow requires preservation of frame transmission order (*see col. 3, line 1 to col. 4, line 39, Bellenger further discloses the switch node also comprises logic which computes a plurality of hash value in response to respective sets of control fields in a received frame*).

Regarding **claims 29**, in addition to features in base claim 28 (*see rationales pertaining the rejection of base claim 28 discussed above*), Bellenger in view of Muller further discloses promoting the received frames from the dedicated buffer in the order received, without regard to frame transmission order, unless it is determined that the identified flow requires preservation of frame transmission order (*see col. 3, lines 7-65; Fig. 5, col. 10, line 65 to col. 11, line 40; and Fig. 6, col. 15, line 1-35*).

Regarding **claims 30**, in addition to features in base claim 25 (*see rationales pertaining the rejection of base claim 25 discussed above*), Bellenger in view of Muller further discloses determining whether the identified flow requires preservation of frame transmission order by analyzing protocol identification information embedded within the received frames (*see col. 3, lines 7-20; Fig. 5, col. 10, line 65 to col. 11, line 40; and Fig. 6, col. 15, line 1-35*).

Regarding **claim 32**, in according to Bellenger reference entirety (especially *Figs. 3-6 and the description at col. 3, line 1 to col. 4, line 67 and col. 8, line 3 to col. 16, line 10*), Bellenger shows a network device (Fig. 3) comprising: means for receiving an indication to denote commencement of a flow of frame transmission (see Fig. 3, *element 215 and the description at col. 3, lines 7-24 or Fig. 4, step 300; col. 10, lines 35-36*); means for indicating at least one receive buffer to receive all frames associated with the flow (see Fig. 3, *elements 212, 211 and 207 and the description at col. 15, lines 11-14*); and means for assigning a pointer value (*identifying tag or hash values*) to each frame based, at least in part, on the relative order in which the indications of start of frame transmissions associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order (see *col. 3, lines 7-61, Bellenger discloses a switch node comprises a flow logic generates identifying tag acted as flow signatures to associated a frame with a sequence of frames traversing the switch, and a node route logic performs the blocking technique allows the remote system to which a frame was directed for routing, to forward the frame to its destination, prior to other frames in the same flow sequence being routed to that destination. This preserves the order of the transmission of frames in a particular flow*).

Bellenger fails to explicitly disclose the limitation of "*means for assigning a pointer value to each frame without modification of a frame, the pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, the corresponding pointer value associated*

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*with each respective frame being used to preserve a state of frame transmission order according to complete reception of the frame".* However, such limitation lacks thereof from Bellenger reference is well known and disclosed by Muller.

In the same field of endeavor, Muller (*see the '132 patent entirety*) teaches a method for shared memory management in a switched network element, comprising, among other things, a shared memory manager ('132; Fig. 2; element 220 or Fig. 3B). Muller's shared memory manager 220 reads on the claimed limitation of *"means for assigning a pointer value to each frame without modification of a frame, the pointer value being based, at least in part on the relative order in which the indications of start of frame transmissions associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order according to complete reception of the frame"* (*see '132, col. 6, line 44 to col. 7, line 41; Fig. 3B and col. 9, lines 6-56; and Fig. 5 and col. 10, line 47 to col. 11, line 15*) to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to incorporate Muller's shared memory manager into Bellenger's system or to replace Bellenger's arbiter 211 with Muller shared memory manager 220 to arrive the claimed invention with a motivation to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Regarding **claim 33**, in addition to features in base claim 32 (*see rationales pertaining the rejection of base claim 32 discussed above*), Bellenger in view of Muller

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further teaches means for promoting frames of the received flow in the order received (see '054, Fig. 3, elements 212, 211 and 207 and the description at col. 3, lines 61-65).

Regarding **claim 34**, in addition to features in base claim 32 (see *rationales pertaining the rejection of base claim 32 discussed above*), Bellenger in view of Muller further teaches creating a list of pointer values corresponding to transmission order if it is determined that the identified flow requires preservation of transmission order (see '054, Fig. 3, elements 215 and the description at col. 3, line 1 to col. 4, line 39).

Regarding **claim 35**, in addition to features in base claim 1 (see *rationales pertaining the rejection of base claim 1 discussed above*), Bellenger in view of Muller further teaches wherein the receiving of up to the plurality of indications denoting the start of frame transmission includes receiving a plurality of Receive Data Valid signals (inherent in gigabit Ethernet) (see '054, col. 4, lines 4-14 and '132, col. 4, lines 22-60).

Regarding **claim 36**, in addition to features in base claim 21 (see *rationales pertaining the rejection of base claim 21 discussed above*), Bellenger in view of Muller further teaches wherein the indication to denote commencement of the flow of frame transmission that is received by the module of the program is a Receive Data Valid signal (see '054, col. 4, lines 4-14 and '132, col. 4, lines 22-60).

Regarding **claim 37**, in addition to features in base claim 25 (see *rationales pertaining the rejection of base claim 32 discussed above*), Bellenger in view of Muller further teaches wherein the receiving of up to the at least one indication comprises receiving at least one Receive Data Valid signal (inherent in gigabit Ethernet) (see '054, col. 4, lines 4-14 and '132, col. 4, lines 22-60).

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Regarding **claim 38**, in according to Bellenger reference entirety (*especially Figs. 3-6 and the description at col. 3, line 1 to col. 4, line 67 and col. 8, line 3 to col. 16, line 10*), Bellenger discloses a method (Fig. 3) comprising:

asserting control signals each denoting commencement of a frame transmission (*inherent in gigabit Ethernet; see col. 4, lines 4-14*); identifying a receive buffer (207) to receive all frames associated with the flow (*see col. 15, lines 11-14*); and assigning a pointer value (*identifying tag or hash values*) to each frame, the pointer value being based, at least in part, on the relative order in which the control signals associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order (*see col. 3, lines 7-61, Bellenger discloses a switch node comprises a flow logic generates identifying tag acted as flow signatures to associated a frame with a sequence of frames traversing the switch, and a node route logic performs the blocking technique allows the remote system to which a frame was directed for routing, to forward the frame to its destination, prior to other frames in the same flow sequence being routed to that destination. This preserves the order of the transmission of frames in a particular flow*). Bellenger fails to explicitly disclose the limitation of "assigning a pointer value to each frame for storage within a pointer buffer, each pointer value being based, at least in part on the relative order in which the control signals associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order".

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However, such limitation lacks thereof from Bellenger reference is well known and disclosed by Muller.

In the same field of endeavor, Muller (*see the '132 patent entirety*) teaches a method for shared memory management in a switched network element, comprising, among other things, the limitation of *"assigning a pointer value to each frame for storage within a pointer buffer, each pointer value being based, at least in part on the relative order in which the control signals associated with each frame are received, the corresponding pointer value associated with each respective frame being used to preserve a state of frame transmission order"* (*see '132, col. 6, line 44 to col. 7, line 41 and Fig. 5 and col. 10, line 47 to col. 11, line 15*) to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

Thus, it would have been obvious to those skilled in the art at the time of the invention was made to implement Muller's teaching in Bellenger's method to arrive the claimed invention with a motivation to provide a reduce buffer memory and scalable switch (*see '132, col. 7, lines 30-41*).

### ***Response to Arguments***

4. Applicant's arguments filed 10/22/2003 have been fully considered but they are not persuasive. Applicants' arguments will be addressed hereinbelow in the order in which they appear in the response filed 10/22/2003.

In the Remarks of the outstanding response, on page 7, pertaining the double patenting rejection of claims 1, 21, 25, 32 and 25-38, Applicants just merely state *"This*



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*is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented".*

Applicants are reminded that a mere regarding statement would not overcome the double patenting rejection. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Also on page 7 continues to page 8 of the response, pertaining the 35 U.S.C § 103(a) rejection (*not 35 U.S.C § 102(e) as indicated in the Applicants' response*) of claims 1-8, 21-23 and 25-38, Applicants' allege "*Bellenger and Muller taken alone or in any combination, do not disclose, suggest, or render obvious (1) assigning a pointer value based on a relative order in which the indications are received and (2) the pointer value preserving a state of frame transmission order according to complete reception of the frame without modifying the respective frame*".

Examiner recognizes Applicants' allegation is based on the newly added limitation and respectfully disagrees. In light of the claim language, Examiner asserts the Office Action has clearly pointed out the claimed limitations corresponding to the applied references. There is no specific language in the claim to distinguish the Applicants' claimed "pointer value" from Bellenger's "tag or hash value". As clearly pointed out in the Office Action, at col. 3, lines 7-61, Bellenger discloses a switch node comprises a flow logic generates identifying tag acted as flow signatures to associated a frame with a sequence of frames traversing the switch, and a node route logic performs

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the blocking technique allows the remote system to which a frame was directed for routing, to forward the frame to its destination, prior to other frames in the same flow sequence being routed to that destination. This preserves the order of the transmission of frames in a particular flow. The "*according to complete reception of the frame*" and "without modifying the respective frame" are disclosed by Muller (see '132, col. 6, line 44 to col. 7, line 41 and Fig. 5 and col. 10, line 47 to col. 11, line 15). Matter of fact, '132 patent, at col. 6, lines 44-51, Muller clearly discloses the forwarding decision for a packet received on a given input port 206 is complete before the next packet arrives at that input port 206". Thus, the newly added limitation of "according to complete reception of the frame" still clearly reads on by the Bellenger in view of Muller, contradistinction to the Applicants' allegation.

Examiner believes an earnest attempt has been made in addressing all of the Applicants' argument. Due to the arguments are not persuasive and the claims, in the present condition, are still anticipated by Bellenger in view of Muller, the rejection from last Office Action is maintained.

### ***Conclusion***

**5. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Duong whose telephone number is (703) 308-5428. The examiner can normally be reached on 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (703) 308-5463. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



Frank Duong  
December 28, 2003